

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NICOLE LOGAN, et al.,
Plaintiffs,

v.

CITY OF PULLMAN POLICE
DEPARTMENT, et al.,
Defendants.

No. CV-04-214-FVS

ORDER GRANTING DEFENDANT
WILLIAM WEATHERLY'S MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT is Defendant William Weatherly's Motion for Summary Judgment (Ct. Rec. 304). Plaintiffs are represented by Darrell Cochran and Thaddeus Martin. Defendants are represented by Andrew Cooley, Stewart Estes, Kim Waldbaum and Richard Jolley.

I. BACKGROUND

Plaintiffs' Amended Complaint asserts claims under 42 U.S.C. § 1983 against the City of Pullman Police Department and Chief Weatherly, in his individual and official capacity, for (1) "official policies and customs fostering the unlawful use of police force and racial discrimination" and "for decisions made by officials with final decision-making authority that resulted in unlawful police force and racial discrimination", Complaint, at ¶ 6.1.5; (2) "for deliberate indifference in failure to adopt appropriate policies and training to prevent the unlawful use of police force and to prevent racially

1 discriminatory police conduct that results in the deprivation of civil
2 rights", Complaint, at ¶ 6.1.6; and (3) "failure to supervise and
3 train its officers", Complaint, at ¶ 6.1.7. The Court previously
4 dismissed all of these claims against the City of Pullman Police
5 Department and against Chief Weatherly in his official capacity. (Ct.
6 Rec. 303)¹. Chief Weatherly now moves for summary judgment dismissal,
7 with prejudice, of the remaining federal claims against him in his
8 individual capacity.

9 **II. DISCUSSION**

10 There is no respondeat superior liability under 42 U.S.C. § 1983.
11 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). However,
12 liability under Section 1983 may be imposed against a supervisory
13 official in his individual capacity for his own culpable action or
14 inaction in the training, supervision, or control of his subordinates.
15 *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991)
16 (citation omitted). An official who has failed to prevent a
17 constitutional violation, by inadequately training, supervising or
18 investigating his subordinates, may be liable under Section 1983 if
19 the plaintiff shows (1) the supervisor possessed the requisite
20 culpable state of mind; and (2) a causal connection between the
21 supervisor's action or inaction and the infliction of the alleged
22 constitutional harm. See e.g., *Redman v. County of San Diego*, 942
23 F.2d 1435, 1446-47 (9th Cir. 1991) (en banc), cert. denied, 502 U.S.

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25 ¹ Order Granting Defendants' Motion for Summary Judgment Re:
26 Plaintiffs' 42 U.S.C. § 1983 Claims (hereinafter "Order").

1 1074, 112 S.Ct. 972, 117 L.Ed.2d 137 (1992). Culpability is
2 established by showing a supervisor was deliberately indifferent to
3 "acts by others which the [supervisor] knows or reasonably should know
4 would cause others to inflict the constitutional injury." *Id.* at
5 1447.

6 Plaintiffs argue Chief Weatherly is liable in his individual
7 capacity for his failure to provide adequate training to the Officers
8 on the use of O.C. spray indoors and for enacting a policy that
9 equates the use of O.C. spray with a peaceful escort. However, the
10 Court previously dismissed these claim against the Pullman Police
11 Department and Chief Weatherly, in his official capacity.
12 Specifically, the Court found that Plaintiffs failed to raise an issue
13 of material fact with respect to whether the Police Department and
14 Chief Weatherly, in his official capacity, adopted this policy with
15 deliberate indifference as to its known or obvious consequences.²
16 (Order, at 7). The Court further found that Plaintiffs "failed to
17 submit sufficient evidence showing the City [of Pullman Police
18 Department] exhibited "deliberate indifference" to the training of its
19 police officers in the area of O.C. spray[.]" (Order, at 7).
20 Plaintiffs present no authority allowing the Court to hold Chief

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22 ² "Moreover, even if Plaintiffs had presented sufficient
23 evidence to create an issue of material fact as to whether the
24 portion of the City's PPD Manual that equates the use of O.C.
25 spray with an escort was deliberately indifferent to the
26 Plaintiffs' constitutional right to be free from excessive force,
Plaintiffs have not satisfied the third prong of *Gibson*.
Plaintiff have not presented any evidence illustrating that such
policy was the "moving force" behind the Plaintiffs'
constitutional deprivations." (Order, at 7).

1 Weatherly liable in his individual capacity for claims the Court has
2 already dismissed against Chief Weatherly in his official capacity.
3 Therefore, with respect to these claims, Plaintiffs' Memorandum in
4 Opposition to Defendant Weatherly's Motion for Summary Judgment
5 appears to be a motion for reconsideration. However, any motion for
6 reconsideration at this stage would be untimely.

7 Plaintiffs also argue Chief Weatherly is liable in his individual
8 capacity for Plaintiffs' Constitutional violations because Chief
9 Weatherly did not discipline the individual Officers after the
10 incident at the Top of China. Plaintiffs argue that in failing to
11 discipline the Officers, Chief Weatherly "condoned, ratified, and
12 encouraged the excessive use of force" displayed by the Officers when
13 responding to the Top of China. In support of this argument,
14 Plaintiffs point the Court to only one case. *See Larez v. City of Los*
15 *Angeles*, 946 F.2d 630 (9th Cir. 1991) (holding that failure to
16 reprimand after an investigation in response to a subordinate's
17 conduct that violate's a plaintiff's constitutional right may be
18 sufficient to hold a supervisor responsible for constitutional
19 deprivations).

20 Ratification may form the basis for liability under Section 1983
21 "[i]f the authorized policymakers approve a subordinate's decision and
22 the basis for it...." *Haugen v. Brosseau*, 339 F.3d 857, 875 (9th Cir.
23 2003), *rev'd on other grounds*, 543 U.S. 194, 125 S.Ct. 596, 160
24 L.Ed.2d 583 (2004). However, the plaintiff must still "prove [] the
25 existence of an unconstitutional policy." *Id.* (quotations omitted).
26 While a single decision may be sufficient to trigger Section 1983

1 liability, "the plaintiff must show that the triggering decision was
2 the product of a conscious, affirmative choice to ratify the conduct
3 in question." *Id.* (citation and internal quotations omitted).

4 In *Larez*, there was evidence the police chief created or
5 maintained a policy by which citizen complaints against officers were
6 rarely sustained. An expert testified to the multiple deficiencies
7 and improprieties regarding the police department's procedures and
8 investigation. For example, the unit being investigated, as opposed
9 to a separate internal affairs unit, was given responsibility for
10 passing upon the citizen's complaints. *Larez*, 946 F.2d at 647. The
11 conclusion that the department had a policy of not reprimanding
12 officers for use of excessive force was further corroborated by a two-
13 year comparative study demonstrating that it was "almost impossible
14 for a police officer to suffer discipline as the result of a complaint
15 lodged by a citizen" and that it was as if "something had to be done
16 on film for the department to buy the citizen's story." *Id.* The
17 plaintiffs in *Larez* also presented evidence that the police chief
18 signed a letter, informing the plaintiff that none of his complaints
19 would be sustained. *Id.*

20 On the other side of the spectrum, the Ninth Circuit granted
21 summary judgment against the plaintiff in *Haugen* because there were no
22 facts that the single failure to discipline the officer rose to the
23 level of a "ratification." *Haugen*, 339 F.3d at 875 (citing with
24 approval *Santiago v. Fenton*, 891 F.2d 373, 382 (1st Cir. 1989)
25 (holding that a failure to discipline in two instances did not
26 demonstrate a sufficiently widespread municipal policy to hold the

1 city liable under *Monell*)). Thus, the court held that the plaintiff
2 failed to demonstrate the decision not to discipline the officer was a
3 conscious, affirmative choice to ratify the alleged use of excessive
4 force. *Id.*

5 While *Larez* and *Haugen* stand for the proposition that the failure
6 to reprimand may support a finding of a municipal policy of deliberate
7 indifference to constitutional violations, neither stands for the
8 proposition that whenever a supervisor or municipality's investigation
9 fails to lead to a reprimand or discharge of an employee, a policy
10 giving rise to Section 1983 liability is deemed to exist. The Ninth
11 Circuit appears to require more than a failure to reprimand to
12 establish ratification leading to liability. See e.g., *Henry v.*
13 *County of Shasta*, 132 F.3d 512, 519 (9th Cir. 1997). In *Henry*, the
14 plaintiff proved only that the officers' conduct in a single incident
15 showed a disregard for human life and safety, but the court held that
16 "the police chief's failure to respond to the situation or to make
17 changes in order to prevent recurring violations evidenced the city's
18 preexisting policy of deliberate indifference to the dangerous
19 recklessness of its police officer." 132 F.3d at 519. However, in
20 *Henry*, the court did not rely exclusively on the failure to reprimand
21 in the single incident in finding a policy of deliberate indifference
22 to constitutional violations. The *Henry* court determined that
23 evidence of other incidents, similar to that alleged by the plaintiff,
24 occurring after Mr. Henry had filed suit and "after being put on
25 notice unequivocally of its deputies' ... unconstitutional treatment
26 of Henry," was "persuasive evidence of deliberate indifference or of a

1 policy encouraging such official misconduct." *Henry*, 132 F.3 at 519.

2 Here, the Court concludes that Chief Weatherly's post-event
3 conduct (failure to discipline) does not rise to the level of post-
4 event ratification described in *Henry* and *Larez*. In *Larez*, the police
5 chief had significantly more involvement with the constitutional
6 violations than Chief Weatherly is alleged to have had in this case.
7 Further, Plaintiffs present no evidence that Chief Weatherly created
8 or maintained a policy whereby civilian complaints of excessive force
9 are meaningless or officers are routinely exonerated of wrongdoing.
10 Unlike *Larez*, Plaintiffs don't present any evidence that Chief
11 Weatherly received complaints for excessive force by the Pullman
12 Police Department *prior* to the incident at issue. Unlike *Henry*,
13 Plaintiffs have not pointed to any evidence of other incidents of
14 excessive force involving O.C. spray occurring after the incident at
15 issue in this case. Further, Plaintiffs have not presented any
16 evidence to demonstrate that the investigations into the events
17 involved in this action were wholly inadequate or meaningless. In
18 contrast to *Larez*, here, the City of Pullman hired an independent
19 investigator, Robert Keppel, Ph.D., who issued a lengthy report
20 concluding that there were no constitutional violations. In fact,
21 Plaintiffs can't, in good faith, now label Dr. Keppel's report
22 inadequate because Plaintiffs themselves have previously relied on Dr.
23 Keppel's report.

24 To establish the requisite culpability that would enable
25 Plaintiffs to hold Chief Weatherly liable in his individual capacity,
26 Plaintiffs must show Chief Weatherly was deliberately indifferent to

1 acts by others which he knew or reasonably should have known would
2 cause others to inflict Plaintiffs' alleged constitutional injuries.
3 See *Redman*, 942 F.2d at 1447. Without something more, challenging
4 Chief Weatherly's discipline decisions *after* the incident does not
5 satisfy this deliberate indifference standard. Plaintiffs have not
6 demonstrated that the decision not to discipline the Officers was a
7 conscious, affirmative choice to ratify the Officers' alleged use of
8 excessive force. See *Haugen*, 339 F.3d at 875. For these reasons, the
9 Court determines Plaintiffs have failed demonstrate that a triable
10 issue of fact exists as to whether Chief Weatherly's post-event
11 conduct evidences a preexisting municipal policy of deliberate
12 indifference to its police officers' unconstitutional use of excessive
13 force through the use of O.C. spray. Therefore, the Court grants
14 Chief Weatherly's Motion for Summary Judgment and dismisses the
15 Plaintiffs' remaining federal claims against Chief Weatherly in his
16 individual capacity with prejudice. Accordingly,

17 **IT IS HEREBY ORDERED** that Defendant William Weatherly's Motion
18 for Summary Judgment (**Ct. Rec. 304**) is **GRANTED**.

19 **IT IS SO ORDERED.** The District Court Executive is hereby
20 directed to enter this Order and furnish copies to counsel.

21 **DATED** this 24th day of April, 2006.

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23 s/ Fred Van Sickle
Fred Van Sickle
United States District Judge
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